

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL R. SPENCER,

Plaintiff-Appellant,

v

DETROIT EDISON, a/k/a DTE ENERGY
COMPANY,

Defendant-Appellee.

UNPUBLISHED

May 20, 2010

No. 290977

Macomb Circuit Court

LC No. 2007-002490-NO

Before: SAAD, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

The trial court determined that defendant was entitled to summary disposition pursuant to MCL 600.2959, because there was no genuine issue of material fact that plaintiff was more than 50 percent at fault. MCL 600.2959 provides:

In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the court shall reduce the damages by the percentage of comparative fault of the person upon whose injury or death the damages are based as provided in [MCL 600.6306]. If that person's percentage of fault is greater than the aggregate fault of the other person or persons, whether or not parties to the action, the court shall reduce economic damages by the percentage of comparative fault of the person upon whose injury or death the damages are based as provided in [MCL 600.6306], and noneconomic damages shall not be awarded.

A court properly may grant summary disposition under this statute if no reasonable juror could find that the defendant was more at fault. Cf. *Huggins v Scripter*, 469 Mich 898; 669 NW2d 813 (2003).

The evidence, viewed in a light most favorable to plaintiff, showed that defendant's alleged negligence consisted of failing to promptly take action to protect the public from low-hanging wires. However, plaintiff's injuries occurred after plaintiff's pickup truck was freed from the wires. After plaintiff accelerated the pickup truck to free it from the wire that caught on the ladder on the top of the cab of his pickup truck, plaintiff stopped the truck. Plaintiff then slipped on wet pavement when he stepped out of the pickup truck to warn the driver of an on-coming school bus of the downed wires. Under these circumstances, the slip was the fault of plaintiff rather than defendant. No reasonable juror could find that defendant was more at fault than plaintiff in causing his injuries. Therefore, the trial court properly determined that MCL 600.2959 was applicable.

Plaintiff also argues that defendant was not entitled to summary disposition on the issue of notice. However, lack of notice was not the basis for the trial court's decision and, in light of our decision with respect to MCL 600.2959, it is unnecessary to consider the issue of notice.

Affirmed.

/s/ Henry William Saad

/s/ Joel P. Hoekstra

/s/ Deborah A. Servitto